

R E M A R K S

Claims 30-31, 36-37 and 49-56 were pending and stand rejected. Claim 57 has been added. Claims 51-52 and 55-56 have been canceled. The only remaining issues are as follows:

- (1) Claims 30-31, 36-37 and 49-56 are rejected under 35 U.S.C. 112 as being indefinite.
- (2) The claims (with the exception of Claims 52 and 56) are allegedly not patentably distinct over Claims 22-25 of the '422 patent.
- (3) The priority claim is allegedly incorrect.

Applicants believe that the following remarks traverse the Examiner's rejection of the claims. These remarks are presented in the same order as they appear above.

I. THE CLAIMS ARE DEFINITE

The Examiner has rejected the claims under 35 U.S.C. 112 as indefinite. The Examiner argues that the claims "appear to lack essential elements and steps." More specifically, the Examiner argues that it is "unclear where the remaining plant viral nucleic acid sequences necessary for plant viral particle synthesis are provided." (Office action, page 4). The Applicants respectfully disagree. As noted in *In re Rasmussen*, 211 USPQ 323, 326 (CCPA 1981): "[T]hat a claim may be broader than the specific embodiment disclosed in a specification is in itself of no moment." Therefore, a claim does not need to contain all of the elements and steps set forth in the examples. Without waiving this argument, but to further the prosecution, and hereby reserving the right to prosecute the unamended claims (or similar claims) in the future, independent Claims 30, 49 and 53 have been amended to specify a "plant virus genome." Thus, the claims clearly indicate the "plant viral nucleic acid sequences necessary for plant viral particle synthesis" are present. For this reason, the rejection must be withdrawn.

II. THE DOUBLE PATENTING REJECTIONS ARE MOOT

The claims (with the exception of Claims 52 and 56) are allegedly not patentably distinct over Claims 22-25 of the '422 patent. Without agreeing with the Examiner, but to further the prosecution, and hereby reserving the right to prosecute the unamended claims (or similar claims) in the future, independent Claims 30, 49 and 53 have been amended to specify that the foreign peptide is of a certain size (i.e. the limitations of claims 52 and 56 have been incorporated into the independent claims). It is believed that this renders the double patenting rejections moot.

III. THE PRIORITY INFORMATION HAS BEEN CORRECTED

The Examiner maintains that the priority claim is incorrect. First, the Examiner is requested to note that the priority information was amended in a Response filed December 31, 2001. Second, an Application Data Sheet (attached hereto at Tab 1) may be used to correct or update information in a previously submitted application data sheet, or an oath or declaration" pursuant to 37 CFR 1.76 (c)(1). Thus, a new declaration is not required.

CONCLUSION

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that these grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617-984-0616.

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Peter G. Carroll
Registration No. 32,837

MEDLEN & CARROLL, LLP
220 Montgomery Street, Suite 2200
San Francisco, California 94104